

Federal Housing Finance Board

§ 908.4

AUTHORITY: 12 U.S.C. 1422b(a)(5), 4631(c) and (f), and 4632-4641. Section 908.4 is also authorized by 12 U.S.C. 1818(b)(6) and (7).

SOURCE: 67 FR 9903, Mar. 5, 2002, unless otherwise noted.

Subpart A—Introduction

§ 908.1 Scope.

This part prescribes rules of practice and procedure applicable to any hearing with regard to:

(a) Cease and desist proceedings under section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)); or

(b) Civil money penalty assessment proceedings under section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)).

§ 908.2 Definitions.

For purposes of this part—

Decisional employee means any employee of the Finance Board, except the Office of General Counsel, or any member of the presiding officer's staff who has not engaged in an investigative or prosecutorial role in connection with the subject cease and desist or civil money penalty proceedings and who may assist the Board of Directors or the presiding officer, respectively, in preparing orders, recommended decisions, decisions and other documents under this part.

Hearing means an adjudicatory proceeding conducted pursuant to this part;

Notice means a written notice of charges or notice of assessment of a civil money penalty so titled that served by the Finance Board upon a respondent, which conforms to § 908.40 and describes the alleged violations with sufficient specificity to put the respondent on notice of the nature and scope of the charges being brought against him, except in the context of the plain meaning of the word notice in a provision, such as reasonable notice or actual notice.

Party means, for purposes of subparts C through F of this part only, the Finance Board or respondent.

Person means an individual, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, agency, Bank, or other entity or organization with the exception of the Finance Board.

Presiding officer means an administrative law judge or other qualified, neutral individual who is appointed by the Finance Board under applicable law, and, pursuant to Title 5 of the United States Code, may conduct a hearing or adjudicatory proceeding under this part.

Representative of record means an individual who is authorized to represent a respondent (and includes a respondent who represents himself) at a hearing conducted under this part and who has filed a notice of appearance in accordance with § 908.72.

Respondent means any person named in a notice of charges or notice of determination to impose civil money penalties issued by the Finance Board.

Safety and Soundness Act means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501-4641) (Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102-550).

Violation includes any act or omission by any person, undertaken alone or with one or more others, that causes directly or indirectly, counsels, participates in, or otherwise furthers, aids or abets a violation of the Act, other applicable law, regulation, or order of the Finance Board.

§ 908.3 Rules of construction.

For purposes of this part—

(a) Any term in the singular includes the plural and the plural includes the singular, if such use would be appropriate;

(b) Any use of a masculine, feminine, or neuter gender encompasses all three, if such use would be appropriate; and

(c) Unless the context requires otherwise, a party's representative of record, if any, may, on behalf of that party, take any action required to be taken by the party.

Subpart B—Scope and Authority— Enforcement Proceedings

§ 908.4 Cease and desist proceedings.

(a) *Notice of charges*—(1) *Grounds*. The Finance Board may issue and serve a notice of charges upon a Bank or any executive officer or director of a Bank if the Finance Board determines that such party is engaging or has engaged

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in, or, if the Finance Board has reasonable cause to believe is about to engage in:

- (i) An unsafe or unsound practice in conducting the business of the Bank;
- (ii) Any conduct that violates any provision of the Act or any applicable law, order, rule or regulation; or
- (iii) Any conduct that violates any condition imposed in writing by the Finance Board in connection with the granting of any application or other request by the Bank, or any written agreement between the Bank and the Finance Board.

(2) *Content of notice of charges.* A notice of charges shall contain a statement of the facts constituting the alleged conduct or violation and otherwise shall conform to the requirements set forth in § 908.40.

(b) *Cease and desist order*—(1) *Issuance of order.* An order to cease and desist shall be issued in writing and only after the respondent has been given the opportunity for a hearing on the record in accordance with the requirements set forth in § 908.9. If the Board of Directors finds, based on the record of the hearing, that any conduct or violation specified in the notice of charges has been established or if a respondent consents (or is deemed to have consented pursuant to § 908.43), the Board of Directors may issue and serve upon the respondent an order requiring the respondent to cease and desist from any such practice, violation or conduct, to take affirmative action to correct or remedy the conditions resulting from any such practice, violation or conduct, or to comply with such limitations on activities or functions as may be prescribed therein.

(2) *Affirmative action.* The authority of the Board of Directors to issue and serve a cease and desist order that requires a respondent to take affirmative action to correct or remedy any conditions resulting from any violation or practice with respect to which such order is issued includes the authority to require a respondent to—

- (i) Make restitution or provide reimbursement, indemnification, or guarantee against loss if—

(A) The respondent was unjustly enriched in connection with the viola-

tion, conduct or practice described in the order; or

(B) The violation, conduct or practice involved a reckless disregard for the law or any applicable regulations or prior order of the Finance Board;

- (ii) Restrict the growth of the Bank;
- (iii) Dispose of any loan or asset involved;

(iv) Rescind any agreement or contract;

(v) Employ qualified officers or employees (who may be subject to approval by the Finance Board, as directed by the Finance Board); and

(vi) Take such other action as the Finance Board determines to be appropriate.

(3) *Authority to limit activities.* The authority of the Board of Directors to issue and serve a cease and desist order includes the authority to place limitations on the activities or functions of a respondent.

(c) *Effective date of order.* An order issued under paragraph (b) of this section shall become effective upon the expiration of the 30-day period beginning on the date of service of the order upon the respondent, (except in the case of an order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided in the order, except to the extent that the order is stayed, modified, terminated, or set aside by action of the Board of Directors or otherwise as provided for in this part.

§ 908.5 Temporary cease and desist orders.

(a) *Grounds.* Whenever the Board of Directors determines that any conduct or violation, or threatened conduct or violation, specified in a notice of charges issued and served upon a respondent, or the continuation of such conduct or violation, is likely to cause insolvency, a significant depletion of total capital, or irreparable harm to a Bank prior to the completion of the cease and desist proceeding, the Board of Directors may issue a temporary order requiring the respondent to cease and desist from any such conduct or violation, or such threatened conduct or violation, and to take affirmative